REMARKS/ARGUMENTS

Claims 1-11 (the claims at issue) are pending in the application and are currently amended. Independent claims 1, 5, and 9 have been amended for formal reasons and to make clearer that the selection of an implementation required by the claims is done at runtime. Support for the amendment is found at page 9, lines 8-10 (see paragraph 28 of the published application). Although Applicant does not view the amendments as being narrowing, Applicants submit that the amendments make it abundantly clear that according to the invention the selection of an implementation is done at runtime. The dependent claims have been amended to use correct antecedent basis. Therefore, Applicants respectfully request reconsideration of the final rejection of May 20, 2005, and allowance of the claims.

Rejections under 35 U.S.C. §102.

The Office Action rejected claims 1-11 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,360,360 tilted "Object-Oriented Compiler Mechanism for Automatically Selecting Among Multiple Implementation of Objects" (hereafter, "Bates"). Applicants submit that claims 1-11 are not anticipated by Bates.

Independent claims 1, 5, and 9 all require selecting one of the explicitly selectable implementations during runtime. By contrast, Bates teaches selecting among different implementations of objects <u>by a compiler</u>. Therefore, Bates does not teach selection of an implementation at runtime as required by the claims at issue. See Bates, col. 6, lines 36-39, col. 6, lines 55-57, col. 7, lines 2-6, col. 7, lines 14-16, col. 7, lines 56-57, col. 10, lines 20-21. Therefore, neither independent claims 1, 5, and 9 nor their dependent claims are anticipated by Bates.

Rejections under 35 U.S.C. §103

The Office Action rejected claims as unpatentable over U.S. Patent 6,324,619 (Raverdy et al) in view of Blake et al (U. S. Patent 5,752,038, hereafter Blake). The Applicants respectfully submit that the claimed invention would not have been obvious in view of the cited

references.

The Office Action admits that Raverdy neither teaches nor suggests the claim limitation of instrumenting of a program component to gather cost-related information during at least a partial run of the program. Further, the Office Action does not show the presence of this step in the Blake reference. Moreover, neither reference teaches, suggests, nor motivates selecting an implementation at runtime as the claims at issue require.

Blake relates to a method and system for determining an optimal placement order for code portions within a module to improve locality of reference and reduce the working set of the module. Blake discloses the reduction of the working set of a module. The optimal placement order for code portions within a module reflects the concurrency of usage for code portions during execution of the module. That is, all code portions which execute within a certain period of time are placed in close proximity to each other within the executable module. This method of "time ordering" reduces the working set of a module

In the Office Action of November 17, 2004, the Examiner stated that the Blake reference discloses "instrumenting said component to gather cost-related information during at least a partial run of said program" and points the Applicant to col. 2 lines 45-47 which purportedly describes such a step. That part of the Blake patent does not describe such a step. The cited Blake passage reads:

> "When determining the optimal placement order for each code portion, the present invention executes an instrumented version of the module to collect execution data for each code portion, analyzes the execution data to determine the optimal placement order for each code portion, and links the code portions according to the determined optimal placement order. The instrumented version of the module contains instructions that, when executed, cause execution data to be recorded. When the code portions are linked according to the determined optimal placement order, the working set for the module is reduced, thereby lessening page and cache misses and improving overall system performance."

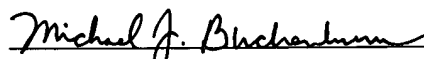Thus, the cited Blake passage makes no mention of instrumenting of a program

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component to gather cost-related information during at least a partial run of the program, as required in the independent claims of the patent application at issue. The Applicant describes in detail the cost functionality of the Applicant's invention in the specification, namely on page 15 lines 10-20 (see excerpt above).

Thus, the Blake reference also does not disclose the instrumenting of a program component to gather cost-related information during at least a partial run of the program, as claimed in Applicant's invention. For this reason, neither the Blake reference, the Raverdy reference nor any combination of the two references disclose, teach, or suggest the aforementioned element of independent claims 1, 5 and 9 - namely, the instrumenting of a program component to gather cost-related information during at least a partial run of the program. Thus, the Examiner's rejection of these claims has been traversed and the Applicant respectfully requests that the rejection is withdrawn. The Applicant further requests allowance of these claims.

Moreover, neither Raverdy nor Blake teaches or suggests selecting, at runtime, one of a plurality of explicitly selectable implementations for a subsequent at least partial run of the program wherein the selection is based estimated costs, as the claims at issue require. Therefore, Applicants respectfully request reconsideration of the rejections of the claims at issue in view of the amendments and remarks made herein.

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims and that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

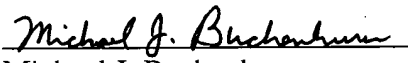Michael J. Buchenhorner
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I hereby certify that this Amendment and Response to Office Action, and any documents referred to as attached therein, are being deposited with the United States Postal Office with sufficient postage as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Michael J. Buchenhorner

Date: August 22, 2005

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